



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID SCOTT HARRISON, Petitioner, vs. JOHN MARSHALL, Warden, Respondent.) Case No. CV 10-2300-GW (RNB)
ORDER ADOPTING FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE; AND
DENYING PETITIONER'S REQUESTS
FOR JUDICIAL NOTICE AND AN
EVIDENTIARY HEARING

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. Petitioner has filed objections to the Report and Recommendation, which includes a request for an evidentiary hearing on his claims. Petitioner's objections also includes two exhibits. Petitioner explicitly has requested that the Court take judicial notice of the second, and the Court presumes that he also is requesting that judicial notice be taken of the first. Having made a de novo determination of those portions of the Report and Recommendation to which objections have been made, the Court concurs with and adopts the findings, conclusions and recommendations of the Magistrate Judge.

IT THEREFORE IS ORDERED that:

1. Petitioner's request that the Court take judicial notice of the Sacramento

1 County Superior Court order granting another inmate's habeas petition attached as
2 Exhibit B to his objections is denied because that order is not relevant to the Court's
3 determination of whether the California courts' rejection of petitioner's federal
4 constitutional claims was contrary to or involved an unreasonable application of
5 clearly established Supreme Court law, or was based on an unreasonable
6 determination of the facts in light of the evidence presented at the disciplinary hearing.
7 Petitioner's implicit request that the Court take judicial notice of the document
8 attached as Exhibit A to his objections, which according to petitioner are excerpts
9 from the "Senior Hearing Officer Manual" that were provided in response to a
10 discovery request in another case, is denied because Exhibit A is not self-
11 authenticating. Nor are those excerpts relevant to the Court's determination of
12 whether the California courts' rejection of petitioner's federal constitutional claims
13 was contrary to or involved an unreasonable application of clearly established
14 Supreme Court law, or was based on an unreasonable determination of the facts in
15 light of the evidence presented at the disciplinary hearing.

16 2. Petitioner's request for an evidentiary hearing is denied because the
17 Court concurs with the Magistrate Judge that all of petitioner's claims are capable of
18 resolution by reference to the state court and administrative records, as well as the
19 exhibits submitted by petitioner in support of his claims. See Totten v. Merkle, 137
20 F.3d 1172, 1176 (9th Cir. 1998). Moreover, the Court concurs with the Magistrate
21 Judge that it is not a federal habeas court's function to make its own assessment of the
22 credibility of witnesses or to reweigh the evidence.

23 3. Judgment be entered denying the Petition and dismissing this action with
24 prejudice.

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26 DATED: December 22, 2010
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GEORGE H. WU
UNITED STATES DISTRICT JUDGE